

### **REMARKS**

Reconsideration of the application, as amended, is respectfully requested.

Claim 8 has been canceled without prejudice in view of the formality rejection.

Claim 1 has been amended to recite that the sterol fatty acid ester is selected from phytosterol fatty acid ester, phytostanol fatty acid ester or a mixture thereof. This is supported at page 3, lines 15-19. Also it may be noted that claim 6 recites an emulsion wherein the fatty acid ester is selected from the group of beta sitosterol, beta sitostanol, other sterols and stanols or a mixture thereof.

Claim 5 has been amended to improve its form by using the indefinite article "a" instead of "the" since D3,3 is not referred to in claim 1. D3,3 is discussed in the last paragraph on page 13 and the first paragraph of page 14 of the specification.

The Office has rejected claims 1-7 under 35 U.S.C. §103(a) as being unpatentable over Penteado et al. in view of Hirokawa et al. (Suzuki) taken with Wester.

Penteado et al. describe pharmaceutical and nutritional compositions comprising phytosterols, folic acid, cyanocobalamine, pyridoxine and alimentary fibres. In column 6, lines 17-20 it is observed that these compositions may be presented in the form of powder, sugar-coated pills, capsules, tablets, paste, various emulsions, granulates and emulsified concentrates. The Office points to no discussion by Penteado et al. of a composition containing sterol fatty acid esters nor of water-in-oil emulsions containing 20-90 wt% fat. Furthermore, although the amounts in examples 1 and 2 (col. 5) appear to be higher, Penteado et al. teach to utilize folic acid preferably in concentrations of

0.00001-0.0001% (column 4, lines 51-56); this preferred amount equates to 0.1-1.0 ppm.

Hirokawa et al. describe margarines containing sterol fatty acid esters and mentions that vegetable sterol esters are more soluble in fat and oil than unesterified plant sterols. The Office points to no teaching of folic acid by Hirokawa et al.

According to the Office it would have been obvious to one of ordinary skill in the art to substitute the phytosterol ester of Hirokawa et al. for the phytosterol of Penteado et al. in a margarine emulsion in order to create a healthy spread with a solubilized phytosterol ester.

The term “emulsions” is used in the Penteado et al. reference, in paragraphs 32 and 42. However, the Office fails to point to any clarification by Penteado et al. as to what type of emulsions are meant.

It is noted that in the context of the present invention the specification discloses that folic acid is employed to improve the mouthfeel and break down behavior of the water-in-oil emulsion and to reduce the water droplet size reducing effect of the sterol fatty acid esters (page 2, lines 24-29). In contrast, Penteado et al. teaches to employ folic acid, preferably in lower amounts, together with cyanocobalamine, pyridoxine and alimentary fibers in the treatment and prophylaxis of hypercholesterolemia and hyperhomocysteinemia.

Since the Office points to no teaching by Penteado et al. of water in oil emulsions which use phytosterol esters, it can only be argued with the benefit of hindsight that by substituting the phytosterol ester of Suzuki for the phytosterol in the emulsions of

Penteado et al. a skilled person would arrive at a water-in-oil emulsion comprising 20 to 90 wt% fat and 1.5 ppm to 1 wt% folic acid. Hence, it is submitted that the subject matter of pending claims 1-7 is unobvious over Penteado et al. in view of Hirokawa et al. taken with Wester.

In view of the foregoing, it is respectfully requested that the application, as amended, be allowed.

Respectfully submitted,



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